

EXHIBIT C



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'MetaBirkins' More Like Trading Cards Than Art, Jury Told

By Pete Brush

Law360, New York (January 31, 2023, 8:06 PM EST) -- A Manhattan federal jury tasked with deciding if a California man's "MetaBirkin" non-fungible tokens ripped off Hermes International's handbag trademarks heard Tuesday that the digital images are more akin to collectibles like baseball cards than to fine art like the "Mona Lisa."

The testimony came during the second day of trial before U.S. District Judge Jed S. Rakoff, who is handling the closely watched **dispute** between the high-end Paris fashion house and Los Angeles designer and entrepreneur Mason Rothschild.

Hermes is seeking to hold Rothschild, 28, liable for his 2021 sale of 100 MetaBirkin NFTs — images that resemble Hermes' Birkin handbags. Hermes says Rothschild poached its flagship trademarks, but Rothschild says that, like famed artist Andy Warhol, he is a pop artist whose NFTs are transformative works protected by the First Amendment.

"Trademark law is about consumer confusion. Artistic expression is a matter of constitutional right," Judge Rakoff said Tuesday before the jury was seated. "That doesn't mean that there can't be a trademark claim where there is artistic expression involved."

With the jury seated, data scientist Kevin Mentzer of Nichols College — who had been called by Hermes to testify about NFTs and blockchain technology, and to give the jury an estimate of Hermes' possible damages — weighed in on the artistic conundrum under questioning from Rothschild's lawyer Rhett Millsaps.

Asked if he thought Rothschild's NFTs are art, Mentzer said he views them as "digital collectibles," more like "baseball cards" and less like the "Mona Lisa."

Asked about Warhol's famed Campbell's Soup can paintings and other works, Mentzer said he considers those to be art because they were of a "groundbreaking nature" in the early 1960s when they were produced.

"I grew up being told that they were art," Mentzer said of Warhol's works, declining to extend that same view toward Rothschild's digital images.

The testimony marked a curious wrinkle in the trial as the defense resorted to creative tactics to introduce its Warhol narrative to the jury. Judge Rakoff on Monday **excluded** the testimony of Blake Gopnik, a Warhol biographer who would have been key in advancing that narrative.

Mentzer separately estimated that Rothschild's sale of the allegedly infringing MetaBirkins, and related royalties, earned him ether cryptocurrency payments worth about \$231,000 as of late 2021. Hermes seeks damages including Rothschild's profits from those sales.

After Mentzer's testimony, the jury heard from Hermes general counsel Nicolas Martin, who testified that, unlike some well-known fashion houses, his company is not known for being litigious and had not brought a trademark suit in the U.S. for decades before suing Rothschild last year.

Martin said his company's "iconic" handbags are its "top-selling product," adding that in its view Rothschild trod upon its right to eventually market Birkins in emerging internet spaces like the ether blockchain.

"We lost the opportunity of being the first on the market, which I think is something very impactful," he said.

Late in the day, Rothschild took the stand briefly for friendly questioning from his lawyers. He told the jury that his real name is Sonny Estival and described how his artistic sobriquet came from nicknames given to him by parents and friends.

Rothschild said he has long been interested in the market for fashion and design, telling the jury that he once got in trouble with the Parsons School of Design for selling knockoff Parsons T-shirts online.

He said he first became interested in NFTs around 2020, and that his first NFTs parodied a chair designed by Pierre Jeanneret.

"Do you have respect for Hermes?" asked defense counsel Jonathan Harris.

"Yes," Rothschild said.

"Even after they sued you?"

"Maybe a little bit less," he said.

Rothschild's testimony is expected to continue on Wednesday.

Hermes is represented by Oren Warshavsky, Gerald Ferguson, Lisa Gehman, Jessica Fernandez, Francesca Rogo and Deborah Wilcox of BakerHostetler.

Rothschild is represented by Rhett Millsaps, Christopher Sprigman, Rebecca Tushnet and Mark McKenna of Lex Lumina PLLC, and Jonathan Harris, Adam Oppenheim and Ashley Robinson of Harris St. Laurent & Wechsler LLP.

The case is Hermes et al. v. Rothschild, case number 1:22-cv-00384, in the U.S. District Court for the Southern District of New York.

--Editing by Adam LoBelia.

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